

# **Construction By Non-Competitive Bid Contract**

## GENERAL INFORMATION

Title 23, part 112, and 23 CFR 635.104(b), allows federal aid construction work to be awarded by some method other than competitive bidding. The required method will be by **force account** whereby a county or city furnishes the labor, equipment, and materials under their direct control. A demonstration of “*cost effectiveness*” (refer to Glossary of Terms for definition), or that an emergency situation exists, must be made if competitive bidding is not utilized. This also applies to force account activities that are performed in conjunction with a competitively bid project.

To be eligible for Federal Emergency Relief, local agencies must follow the procedures in the “Emergency Relief Manual” ([www.fhwa.dot.gov/reports/erm](http://www.fhwa.dot.gov/reports/erm)) dated September 1998. Emergency relief projects that meet these criteria must follow the process described in Section 247.661c of Act 51 of the Public Acts of 1951, as amended and approved by the FHWA.

Approved non-competitive bid projects will be posted at [www.michigan.gov/mdot](http://www.michigan.gov/mdot) on the same web page as the other pertinent design information. From the home page select Doing Business. Next select Local Government Agencies, finally select Non-Competitive Bid Projects.

## GENERAL CRITERIA

A local agency must meet the eligibility criteria described in this document in order to construct a project with their own staff using the Non-Competitive Bid Process.

The proposed work must be identified as a project with defined limits and scope of work. It must be approved for eligibility and programmed by the department. The proposed project must be included in the State Transportation Improvement Plan (STIP) and also have obtained the required environmental clearances prior to obligation.

Minor utility work being performed by force account by utilities and railroads will not be subject to the provisions of this document according to Title 23, part 112, and 23 CFR 635.205(b). Major utility work will be accomplished by competitive bid. Installation of new facilities for private and public utilities shall follow the provisions of this document. An example of installation of new facilities is erecting new street lighting as part of a Transportation Enhancement Project. (refer to Glossary of Terms for definitions for minor utility work and major utility work.)

### **Dollar Limits**

- There is no agency or statewide total yearly dollar limit subject to the non-competitive bid process.
- Force account options are as follows:
  - A. Individual items of work of a project or a complete project can be performed through force account provided the engineer's estimate for construction by competitive bid does not exceed \$100,000. (The limit will include federal, state, and local match - Example: \$80,000 - federal, \$15,000 - state, \$5,000 - local.)
  - B. Special projects for which the engineer's estimate for construction by competitive bid exceeds the \$100,000 limit may be submitted to the department. If the department concurs with the local agency, the project will be forwarded to FHWA for exemption concurrence. (refer to Glossary of Terms for definition of Special Project.)
  - C. The authorized amount on force account projects may be increased through a change order which is justified by a change in condition. This can be through an extra or overrun on the project. The department may increase the cumulative authorized amount to \$100,000. If the cumulative authorized amount exceeds \$100,000, the department must have concurrence by the FHWA and be submitted for the 90-day review to the State Transportation Commission and Legislature. If the local agency elects to complete the project prior to obtaining the necessary approvals, no reimbursement for the excess cost will be made until eligibility has been determined. Example: A local agency has a \$90,000 force account project. During construction, additional work is required due to unforeseen circumstances. The project cost increases to \$110,000. The local agency will be reimbursed up to the original \$90,000 project cost plus an additional \$10,000 with an approved change order. The amount above \$100,000 may or may not be reimbursed pending a determination of eligibility.

### **Project Limits**

- Project limits shall agree with those listed on the STIP.
- Adjacent and overlapping projects shall not be in the same fiscal year.
- Projects may not be shortened or otherwise adjusted to keep under the total non-competitive bid project cost limit.
- Smaller projects of like type, within close proximity, may be combined by the department to allow an opportunity for competitive bid.

### **Estimated Total Project Construction Cost**

- Profit is not allowed for work performed by the local agency.
- Any differences in project items and quantities from the original authorization must be supported by a detailed explanation.

- The project estimate must be prepared using a force account basis, rather than unit price, by the local agency.
- The local agency must construct the project according to the same specifications that would be required by the competitive bid process.
- The breakdown of the cost will include all labor, equipment and materials required for the project to include the following:
  - A. Overhead will not be included in force account reimbursement per federal regulations.
  - B. Rental rates will be based on actual costs with receipts or based on Schedule C rates approved by the Office of Commission Audit (OCA).
  - C. If material is supplied by the local agency, the value of the material should be defined as the price listed on their cost inventory sheets
  - D. Certified payrolls are required.

### **Project Completion Dates**

- The local agency will supply an estimated project duration and estimated completion date for the project.
- If the actual project completion date does not fall within the period on the authorization, an extension of time must be requested. The department will issue a revised authorization if the extension of time is approved.
- Items of work performed after the completion date in the authorization may or may not be accepted for reimbursement depending on the department analysis of the reason and circumstance for the late completion.

### **Basis for Cost Effectiveness for All Projects That Are Done By Force Account**

According to Title 23, part 112, and 23 CFR 635.203(e), "The term *"cost effective"* shall mean the efficient use of labor, equipment, materials, and supplies to assure the lowest overall cost."

- Project cost determination factors are as follows:
  - A. Condition 1: Projects less than or equal to \$100,000 based on the engineer's estimate for construction by competitive bid. The local agency will demonstrate the prudent use of public funds by:
    1. Documenting the local agency can perform the work at a cost less than a proposal prepared for competitive bid. The competitive bid estimate will be generated from historical bid data. The local agency will submit a force account cost estimate and competitive bid estimated cost for the same project. The department will review both estimated costs for reasonableness, using regional average bid prices.
    2. The local agency must demonstrate that the project can be delivered by force account at a minimum of 6% less than the engineer's estimate for construction by competitive bid. Therefore, the maximum authorized amount is \$94,000.

3. The project will be limited to the force account cost estimate unless a change order has been approved by the department.

B. Condition 2: Projects greater than \$100,000 based on the engineer's estimate for construction by competitive bid. The local agency may perform the work provided the following conditions are met:

1. The project was competitively bid.
2. Bids received on the project were 10% or more over the engineer's estimate for construction by competitive bid.
3. A review of the bids has been conducted by the department and a determination made that the bids are not a result of unclear contract plans or proposal information or other conditions that would result in an increase in the estimated project costs. If it is determined that the plan, proposal, estimate or other unconsidered factors caused the increased estimated costs, the project will be rebid.
4. If the bid review has not shown any underlying reason for a bid 10% or more over the engineer's estimate for construction by competitive bid, the department may consider the non-competitive bid process provided the local agency demonstrates that the project can be completed by force account at a cost 6% less than the engineer's estimate. If approved, the department will contact FHWA for their concurrence and submit the project for the 90-day review to the State Transportation Commission and Legislature. Once FHWA concurs and the 90-day review is completed, the department will authorize the local agency to perform the work and freeze the project cost limit to the force account estimate. This amount will not change unless a change order has been approved by the department.
5. If no competitive bids are received, it may be considered cost effective for the local agency to perform the work. The department will first review the project documents to determine that bids were not submitted due to reasons related to the proposal documents or other factors that should have been considered. If warranted, the project documents will be adjusted and the project bid a second time.

- Timeliness due to an emergency

When a situation exists, which affects the health and welfare of a community (i.e., seasonal situation, public safety, or unforeseen events) and time is of the essence; the project may be determined to be cost effective if the local agency can demonstrate that contractors cannot respond within a reasonable time. One of the following criteria needs to be met in order to utilize the non-competitive bid procedure for state or federal funds.

- A. State emergency has been declared by the Governor.  
The reimbursement for expenditures at specific locations has not been determined for state/federal dollars (if declared by FHWA). Repair costs have been determined and initiated by local agency with their own funds. Costs will be submitted to MDOT for reimbursement if, and when, funds become available.
  - B. Federal < \$700,000
    - 1. Must have a minimum of \$5,000 in repair cost per site.
    - 2. 23 CFR 668A indicates that “an application for ER Funds in the range of \$700,000 or less must be accompanied by a showing as to why the damage repair involved is considered beyond the scope of heavy maintenance or routine emergency repair.”
  - C. Federal > \$700,000 (fix with our funds reimbursed in future years)  
This only happens when the FHWA does not release all requested ER Funds. Example: Total ER Funds requested \$2 million. FHWA releases \$1 million. Locals can use their other federal aid with RTF approval to come up with the other \$1 million. Now FHWA may or may not release the additional \$1 million in future years, so the locals may or may not be reimbursed.
- Quality
    - A. The local agency must have adequate and experienced staff to perform the proposed work in a satisfactory manner.
      - 1. The local agency will complete the work in a proficient and timely fashion. This will be determined by the department from the reasonableness of their progress schedules, past performance, and LAP's knowledge of local's supervisory staff.
      - 2. The local agency has access to the appropriate equipment to perform the work. This will be determined by the department from its knowledge of the local agency's capabilities.
    - B. The local agency will complete the work in accordance to the department's approved Michigan Department of Transportation Local Agency Programs Guidelines (4R/3R), same as if it were bid.

### **Required Billing Information**

- A. The billing statement submitted with the 802P must reflect the same level of detail as described in the breakdown of cost for the work prior to authorization.
- B. Labor cost must be documented by certified payrolls.
- C. A breakdown of materials must be listed and the value of the material defined. If material was purchased, a copy of the voucher must be submitted.
- D. The equipment used for the project must be detailed and supported by either Schedule C rates approved by the OCA or rental receipts when applicable.
- E. Overhead will not be included in force account reimbursement per federal regulations.

## **Glossary of Terms**

3R - Resurfacing, Restoration, & Rehabilitation

4R - Reconstruction

AASHTO - American Association for State Highway and Transportation Officials

CFR - Code of Federal Regulations

COST EFFECTIVENESS - the efficient use of labor, equipment, materials, and supplies to assure the lowest overall cost.

FHWA - Federal Highway Administration

LAP - Local Agency Program Section, MDOT

MDOT - Michigan Department of Transportation

OCA - Office of Commission Audit

RTF – Rural Task Force

STIP - State Transportation Improvement Plan

Major Utility Work - New installation which is greater than \$25,000

Minor Utility Work - Relocation of existing utilities which is being done by the owner of the facility with their own forces. There is no dollar amount limit on this item since this is allowed in the federal regulations (applies to railroads and public utilities, private utilities are non-participating unless within their own easement).

Special Project - The Department will consider a request for Non-Competitive bid as a “Special Project” if the following criterion is met:

- The local agency has a contract with a specialty supplier to provide equipment at a fixed price.
- The work cannot be defined in bid documents due to the nature of the work. Usually, this is work on existing infrastructure that may require testing/experimentation on a piecemeal basis in order to obtain the desired results (i.e., adjusting signals, interconnections and making systems work which requires a detailed knowledge of the existing infrastructure).

Change Order - A changed field condition will necessitate increased cost such as unstable soils, buried pavement, unknown utility conflicts, etc. (Refer to section 103 of 2003 Standard Specifications for Construction.)